DICKINSON WRIGHT PLLC
ERIC D. HONE
Nevada Bar No. 8499
Email: ehone@dickinson-wright.com
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
Email: gblumberg@dickinson-wright.com
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
Tel: (702) 550-4400
Fax: (844) 670-6009
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HOFBRÄUHAUS OF AMERICA, LLC, a Nevada corporation, Plaintiff, vs. MUSIC CITY BIERGARTEN, LLC, a Tennessee limited liability company, Defendant.	CASE No. **COMPLAINT FOR:** **(1) FEDERAL TRADE DRESS INFRINGEMENT AND UNFAIR TRADE COMPETITION; AND** **(2) UNFAIR TRADE PRACTICES** **[JURY TRIAL DEMANDED]**

Plaintiff Hofbräuhaus of America, LLC ("Hofbräuhaus"), a Nevada corporation, by and through its attorneys, Dickinson Wright PLLC, states as follows for its Complaint:

PARTIES AND JURISDICTION

1. This Court has subject matter jurisdiction over this trade dress infringement action pursuant to 15 U.S.C. § 1125(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a), involving violations of the Lanham Act, 15 U.S.C. § 1051 *et. seq*. This Court has supplemental jurisdiction over Plaintiff's state law claim for unfair trade practices pursuant to 28 U.S.C. § 1367(a), because the claim is so related to the trade dress infringement action as to form part of the same case or controversy.

2. Hofbräuhaus is a Nevada limited liability company with its principal place of business in Clark County, Nevada. The brand and marks utilized by Hofbräuhaus are owned by Staatliches Hofbräuhaus in München (Hofbräu München). Hofbräu München owns the world-famous Hofbräuhaus brewery in Munich, Germany, as well as the world-famous Hofbräuhaus beer hall. Hofbräuhaus owns the exclusive rights in North America to franchise the Hofbräu München brand, including its related trade dress and marks. As part of its trade dress and franchise experience, Hofbräuhaus offers a distinctive architectural design, atmosphere and dining experience.

3. Both Hofbräu München's beer and its brand are famous worldwide. Hofbräu is one of the most famous, *if not the most famous*, Bavarian beer brand in the world. The Hofbräu München beer hall in Munich remains one of Munich's most famous and well-known tourist attractions.

4. Upon information and belief, Music City Biergarten, LLC ("MCBiergarten") is a Tennessee limited liability company, with its principal place of business Davidson County, Tennessee. MCBiergarten, after engaging Hofbräuhaus in extensive discussions regarding its franchise and unique design elements, including substantial discussions in and visits to Las Vegas, Nevada, ultimately engaged in a concerted effort to infringe on Hofbräuhaus trade dress in order to intentionally and willfully confuse customers as to its association with Hofbräuhaus and the Hofbräu München brand.

5. This Court has personal jurisdiction over MCBiergarten because MCBiergarten engaged in systematic and continuous contacts with Nevada through its interactions with Hofbräuhaus.

6. Venue for these claims is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in Clark County, Nevada, and the Nevada owner of the trade dress at issue, Hofbräuhaus, suffered and continues to suffer the related harm in Clark County, Nevada.

GENERAL ALLEGATIONS

7. In early 2015, MCBiergarten approached Hofbräuhaus with the stated intent of exploring the option to obtain a Hofbräuhaus franchise for a proposed restaurant in Nashville, Tennessee.

8. MCBiergarten and Hofbräuhaus engaged in numerous discussions and meetings regarding franchise opportunities and obligations. This included numerous calls and meetings between MCBiergarten agents and Hofbräuhaus personnel in Nevada and elsewhere.

9. During the course of these discussions, Hofbräuhaus personnel visited the proposed site location in Nashville, Tennessee, and MCBiergarten agents visited various Hofbräuhaus locations including Hofbräuhaus restaurants in Las Vegas, Nevada, St. Petersburg, Florida, and Chicago, Illinois.

10. MCBiergarten agents engaged in lengthy meetings with Hofbräuhaus personnel at the Hofbräuhaus restaurant in Las Vegas, Nevada.

11. While visiting the various Hofbräuhaus operations, MCBiergarten agents learned about the unique aspects, including distinctive architectural details and trade dress, of Hofbräuhaus franchise operations.

12. During the course of its discussions with Hofbräuhaus, MCBiergarten produced architectural drawings and rendering generated by its own architectural contractor.

13. The architectural drawings and renderings, as originally prepared by MCBiergarten's chosen architect and which already included distinctive Hofbräuhaus elements, were insufficient to fully represent and promote the Hofbräuhaus brand and lacked certain core details and trade dress unique to Hofbräuhaus operations.

14. In anticipation of MCBiergarten entering into a franchise agreement and based upon MCBiergarten's express representations that it intended to make every effort to qualify for a Hofbräuhaus franchise, Hofbräuhaus provided MCBiergarten with renderings from certain of its franchise operations including renderings for Hofbräuhaus locations in St. Louis, Illinois, and St. Petersburg, Russia.

15. MCBiergarten took the Hofbräuhaus franchise renderings, provided the Hofbräuhaus specific renderings to their architect and modified the MCBiergarten plans to mimic and replicate the distinctive Hofbräuhaus style and trade dress both on the interior and outside of the building.

16. MCBiergarten then provided revised renderings to Hofbräuhaus for review. After further discussion between MCBiergarten and Hofbräuhaus, MCBiergarten had additional changes made to more completely reflect and replicate certain distinctive Hofbräuhaus trade dress.

17. Eventually, after having obtained extensive guidance, knowledge, architectural and operational information from Hofbräuhaus, MCBiergarten decided to abandon pursuit of a franchise agreement with Hofbräuhaus in favor of operating what it termed "a Bavarian" beer hall. Hofbräuhaus and Hofbräu München, of course, represent the epitome of a Bavarian beer hall.

18. MCBiergarten chose this route, abandoning the Hofbräuhaus franchise plan, in the hope of being able to avoid franchise obligations and fees while still enjoying the benefits associated with a Hofbräuhaus franchise, including the distinct trade dress and appearance associated with Hofbräu München and Hofbräuhaus-affiliated restaurants.

19. After MCBiergarten terminated the franchisee application process, Hofbräuhaus had numerous discussions and communications with MCBiergarten emphasizing and reiterating time and time again, that MCBiergarten was not permitted to continue to use distinctive Hofbräuhaus trade dress that had previously been incorporated into its building plans under the direction of Hofbräuhaus.

20. Hofbräuhaus made every effort to advise and counsel with MCBiergarten to ensure that MCBiergarten removed all Hofbräuhaus trade dress from its building plans in favor of generic, non-confusing and dissimilar characteristics.

21. In late 2016, MCBiergarten began an advertising and marketing campaign designed to draw attention to the restaurant's imminent opening, expected to occur in early-to-

mid 2017. As part of that marketing effort, MCBiergarten arranged for local media coverage and, upon information and belief, provided local media with building renderings substantially identical to a Hofbräuhaus, using distinctive Hofbräuhaus trade dress and even Hofbräuhaus and Hofbräu München logos and branding.

22. Hofbräuhaus was immediately made aware of MCBiergarten's infringement of Hofbräuhaus trade dress by an existing franchise operator.

23. The trade dress infringement evidenced by MCBiergarten's press campaign included, without limitation, use of distinctive Hofbräuhaus exterior elevations (including a triangular facing façade in the middle of the building); design elements that use Hofbräuhaus and Hofbräu München-specific blue and white coloring including checkerboard interior and exterior trim on architectural elements; and crowns similar to the Hofbräu München crown.

24. Hofbräuhaus immediately notified MCBiergarten of its infringing design elements and misuse of Hofbräuhaus trade dress. Hofbräuhaus did so in order to permit MCBiergarten immediate notice of its need to timely change the infringing design elements prior to the completion of construction and opening of its restaurant.

25. Despite numerous communications and protracted discussions with MCBiergarten, it has failed and refused to modify or remove certain Hofbräuhaus trade dress elements from its building.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Trade Dress Infringement – 11 U.S.C. § 1125)

26. Hofbräuhaus repeats, realleges, and incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

27. Hofbräuhaus trade dress is nonfunctional.

28. The design of Hofbräuhaus restaurants is inherently distinctive and/or distinctive by virtue of having acquired secondary meaning.

29. MCBiergarten is using Hofbräuhaus trade dress in connection with the sale, offering for sale, or advertising of goods and services in commerce in a manner that is likely to cause confusion or mistake, or to deceive customers as to an affiliation, connection or association with Hofbräuhaus or Hofbräu München.

30. MCBiergarten's use of Hofbräuhaus trade dress in connection with the sale, offering for sale, or advertising of goods and services in commerce is likely to cause confusion or mistake, or to deceive customers as to the origin, sponsorship, or approval of MCBiergarten's goods, services, or commercial activity by Hofbräuhaus or Hofbräu München.

31. MCBiergarten's use of Hofbräuhaus trade dress was intentional and willful. MCBiergarten used Hofbräuhaus trade dress with the knowledge that it was wrongfully incorporating Hofbräuhaus trade dress into its building for the purpose of sale, offering for sale, or advertising of goods and services.

32. MCBiergarten's use of Hofbräuhaus trade dress was done in bad faith with the intent to cause confusion and/or to deceive customers.

33. As a direct and proximate result of MCBiergarten's trade dress infringement, Hofbräuhaus has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

34. As a direct and proximate result of MCBiergarten's trade dress infringement, Hofbräuhaus has been required to retain the services of an attorney and is entitled to an award of reasonable attorneys' fees and costs incurred in the litigation of this claim.

SECOND CLAIM FOR RELIEF

(Deceptive Trade Practices – NRS § 598.0915)

35. Hofbräuhaus repeats, realleges, and incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

36. Hofbräuhaus is informed and believes, and thereupon alleges, that in the course of conducting its business, MCBiergarten knowingly made false representations as to an affiliation,

connection, and/or association with, or certification by, Hofbräuhaus or Hofbräu München by using Hofbräuhaus trade dress.

37. Hofbräuhaus is informed and believes, and thereupon alleges, that in the course of conducting its business, MCBiergarten knowingly made false representations as to the source, sponsorship, approval, or certification by Hofbräuhaus or Hofbräu München of its good or services for sale.

38. As a direct and proximate result of MCBiergarten's deceptive trade practices, Hofbräuhaus has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

39. As a direct and proximate result of MCBiergarten's deceptive trade practices, Hofbräuhaus has been required to retain the services of an attorney and is entitled to an award of reasonable attorneys' fees and costs incurred in the litigation of this claim.

PRAYER FOR RELIEF

WHEREFORE, Hofbräuhaus respectfully requests that this Court enter judgment in its favor and against MCBiergarten and prays as follows:

A. For preliminary and permanent injunctive relief preventing MCBiergarten, along with its assignees, transferees, employees, agents, owners and representatives, and all other persons, firms or entities acting in concert or participation with MCBiergarten, from using or implementing any design elements that are confusingly similar to any Hofbräuhaus trade dress in connection with any goods or services in any manner;

B. For an award of damages caused by MCBiergarten's unlawful conduct in an amount to be ascertained at trial;

C. For an award of MCBiergarten's profits stemming from its unlawful conduct in an amount to be ascertained at trial;

D. For an award for corrective advertising in an amount to be ascertained at trial;

E. For treble damages pursuant to the Lanham Act;

F. For prejudgment interest;

G. For Hofbräuhaus' attorneys' fees pursuant to the Lanham Act;

H. For costs of the suit incurred in this action; and

I. For other and further relief as this Court may deem just and proper.

DATED this 22nd day of February 2017.

DICKINSON WRIGHT PLLC

/s/ Eric D. Hone

ERIC D. HONE
Nevada Bar No. 8499
Email: ehone@dickinson-wright.com
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
Email: gblumberg@dickinson-wright.com
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
Tel: (702) 550-4400
Fax: (844) 670-6009
Attorneys for Plaintiff